Supreme Court, U.S.
FILED

091166 MAR 3 - 2010

OFFICE OF THE CLERK

NO. _____

IN THE

Supreme Court of United States

Reza H. Ahmadi; Intelligent Office Products, Inc.,

Appellants

- *Petitioners,*

VS.

Static Control Components, Incorporated, Appellee

- *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Reza H. Ahmadi

Owner, Founder and CEO

Intelligent Office Products, Inc.

7302 Wooded Valley Dr.

Houston, Texas 77095

713-515-6149

QUESTION PRESENTED

Whether the court of appeals had jurisdiction over petitioners' appeal, because the appeal was filed timely under the Fed. R. App. P. Rule 4(a) (1) (A), and whether the District Court decision process is different and in conflict with another District Court decision on the same question of law.

LIST OF PARTIES

Static Control Components, Incorporated, Appellee-counsel for Appellee Mr. William L. London, III, Sanford, North Carolina,

TABLE OF CONTENTS

Page

QUESTION PRESENTED I

LIST OF PARTIES II

TABLE OF APPENDICES III

TABLE OF AUTHORITIES IV

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

STATEMENT OF THE CASE 1

REASONS FOR GRANTING THE PETITION 5

A. The appeal should not be dismissed for having jurisdiction 5

B. Notice of appeal is within the jurisdictional time limit and that it was timely filed 5

C. There is a direct conflict between the decision below and a recent decision by the District Court 9

CONCLUSION 12

CERTIFICATE OF SERVICE 1-c

CERTIFICATE OF COMPLIANCE 2-c

TABLE OF APPENDICES

Appendix A - Decision of United States court of appeals 1-a, 2-a, 3-a

Appendix B - Decision of the United States District Court 4-a, 5-a, 6-a, 7-a

CON'T APPENDICES Page

Appendix C - Findings and recommendations of the United State magistrate judge..... 8-a, 9-a

Appendix D - United States Postal Service proof of delivery record with recipient signature....10-a

Appendix E - Notice of Appeal RECIVED & FILED by District court's clerk office.....11-a, 12-a, 13-a

Appendix F – Fax confirmations.....14-a, 15-a, 16-a

Appendix G - US Postal Receipt; Track & Confirm ...17-a

TABLE OF AUTHORITIES

CASES

Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978).....4

Main v. Thiboutot 100 S. Ct. 2502 (1980).....5

Latana v. Hopper, 102 F. 2d 188.....5

Chicago v. New York 37F Supp. 150.....5

Ruffin v. Kingswood E. Condo. Ass'n, 719 So. 2d 951, 952 (Fla. 4th DCA 1998).....5

Hyman v. City of Gastonia, 466 F.3d 284 (4th Cir. 2006).....7

Palmer v. City National Bank of West Virginia, 498 F.3d 236 (4th Cir. 2007).....7

Badger v. Rice, 124 Vt. 82, 84-85, 196 A.2d 503, 505 (1963).....8

Files v. City of Rockford, 440 F.2d 811, 814 (7th Cir. 1971).....8

CON'T CASES Page

Knee v. Smith, 313 So. 2d 117, 118
(Fla. 1st DCA 1975).....10

Pettigrew & Bailey v. Pickle, 429 So. 2d 340
(Fla. 3d DCA 1983).....10

Weintraub v. Alter, 482 So. 2d 454
(Fla. 3d DCA 1986).....11

STATUTES

28 U.S.C. §1254(1).....1

N.C. Gen. Stat. § 75-1.1 *et. Seq*.....2

28 U.S.C. §1746 .....2-c

RULES

Fed. R. App. P. 4(a) (1) (A)..... I, 4, 5, 9

Fed. R. App. P.25 (d) (1) (A) or (B).....6

Fed. R. App. P. 4(a).....6

Fed. R. Civ. P. rule 77(c).....6

Fla. R. Civ. P. 1.080(e).....9

Fla. R. Civ. P. 1.540(a).1.....10

Amendments to Rules of Civil Procedure,
458 So. 2d 245, 247 (Fla. 1984).....9

MISCELLANEOUS

Lund, 2004 VT 55, 3, 7, 15 Vt. L. Wk. 201,
857 A.2d 279 (mem.).....8

IN THE

Supreme Court of United States

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States District Court appears at Appendix B to the petition and is Unpublished. The findings and recommendation of the United States Magistrate Judge appears at Appendix C to the petition and is unpublished.

JURISDICTION

The judgment of the Court of appeals was entered on December 23, 2009. No petition for rehearing was timely filed in my case. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Intelligent Office Products, Inc. (1) (hereinafter referred to as "IOP") is a manufacturing for toner cartridges since 1995, with 85 employees. For a number of years, IOP purchased products (RAW

(1) Intelligent Office Products, Inc. is a Texas corporation with a principal place of business in Houston, Texas, a manufacturer for compatible toner cartridges for LaserJet printers.

Materials) from Static Control Components, Inc. [2] (hereinafter referred to as "Static") for inclusion in its products (building toner cartridges) for sale.

Static knowingly and fraudulently sold defective toner to IOP and hundreds of others, (manufacturers), nationwide for a number of years, and they went into cover-up mode and denied all knowledge of these defects and complaints. As a direct result of Static's defective products sold to IOP, Ahmadi and IOP have been damaged in an amount of millions of dollars and have become financially crippled and devastated.

Static's actions were acts in or affecting commerce and constitute unfair and deceptive trade practices in violation of N.C. Gen. Stat. § 75-1.1 *et. seq.*

On February 8, 2008, counsel for IOP and Ahmadi, Michael Patrick ("Mr. Patrick"), filed a motion to withdraw, because Mr. Patrick suggested that "it was time to start setting up the depositions with several IOP customers, IOP employees, Static's customers, Static's former employees, and would be very costly". IOP was not in the position to continue supporting these funds, because of financial difficulties.

On March 13, 2008, Static filed a motion for summary judgment requesting that the Court find IOP and Ahmadi jointly and severally liable for claims of past due invoices.

[2] Static Control Components, Inc. is a North Carolina corporation with its principal place of business in Sanford, Lee County, North Carolina, a supplier of RAW Material for toner cartridges supplies.

On April 14, 2008, the Court provisionally granted Mr. Patrick's motion to withdraw.
Ahmadi responded to Motion for summary by filing "Answer of IOP, and Ahmadi" with the Court, showing that IOP and Ahmadi rejects Static's claim.
On April 17, 2008, the Court order striking "Answer of IOP and Ahmadi". Court Order allowing Motion to Seal Documents.

On May 12, 2008, Motion by Static to file Supplemental Memorandum, and Memorandum on same.

On July 18, 2008, Ahmadi filed objections to the memorandum opinion and recommendation of Magistrate Judge Russell A. Eliason's Pursuant to a hearing conducted without Ahmadi's presence on May 30, 2008 in Winston-Salem, North Carolina.

On August 4, 2008, Court orders to strike the objection. "Reason improper filling". Please see "Appendix C".

Meanwhile IOP was forced to go out of business.

On December 4, 2008, Court orders Order and Judgment that Default Judgment against IOP and Ahmadi is hereby entered holding both jointly and severely liable to Static's claim. See "Appendix B"

On January 05, 2009, Ahmadi filed a notice of appeal "timely" with the District Court for the Middle District of North Carolina, at Greensboro.

The case was transferred to United States Court of Appeals for the Fourth Circuit.

On April 6, 2009, Ahmadi filed Informal Brief of appellants for Ahmadi and IOP with the Clerk of the Court of Appeals.

On April 23, 2009, counsel for appellee, William L. London ("Mr. London") filed Informal Brief of appellee with the Clerk of the Court of Appeals. appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas David Schroeder, District Judge.

The appellee challenges the Court of Appeals for Court lack of jurisdiction over appellants' appeal, that appellants' notice of appeal was not timely filed.

Accordingly the Court of appeals arguing that Rule 4(a) (1)(A) Fed.R.App.P. requires that a notice of appeal be filed within thirty days after entry of judgment and that this rule is "mandatory and jurisdictional." citing *Browder v. Director, Illinois Department of Corrections*, 434 U.S. 257, 264 (1978).

In reaching its conclusion the Court explained that:

> The District Court's order was entered on the docket on December 4, 2008. The notice of appeal was filed on January 6, 2009—31 days after the entry of the default judgment. Because appellants failed to file a timely notice of appeal, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

Judgment entered on Dec. 23 2009. "In accordance with the decision of this Court, this appeal is dismissed". Please See "Appendix A".

A petition for writ of certiorari is timely if filed on or before March 23, 2010. In the United States Supreme Court within 90 days of this court's entry of judgment.

The law provides that once State and Federal jurisdiction has been challenged, it must be proven. "*Main v. Thiboutot* 100 S. Ct. 2502 (1980)", Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted."*Latana v. Hopper*, 102 F. 2d 188; *Chicago v. New York* 37F Supp. 150

REASONS FOR GRANTING THE PETITION

The appellants "petitioners" seek petition of all three issues presented, for reasons set forth below.

A. The appeal should not be dismissed for having jurisdiction

The appeal should not be dismissed in Court of appeals because, from the face of the notice, the appeal appeared untimely. *See Ruffin v. Kingswood E. Condo. Ass'n*, 719 So. 2d 951, 952 (Fla. 4th DCA 1998).Specifically, the District Court of North Carolina Clerk's time stamp on the notice of appeal shows a date of January 6, 2009, which is one day past the thirty-day time limit. This appeal period is "jurisdictional." See Fed. R. App. P. 4(a) (1) (A).

B. Notice of appeal is within the jurisdictional time limit and that it was timely filed

The notice of appeal was filed timely with the District Court. This petition is accompanied by an affidavit from petitioners listing the related items, to include a statement from the United States Postal Service that delivered the notice and check to the Courthouse for filling with the Clerk of the District Court.

The United States Postal Service's statement reads: "For delivery information on your Certified Mail™ item number 7008 1140 0003 6769 6903. The delivery record shows that this item was delivered on 01/05/2009 at 01:52 PM in Greensboro, NC 27401." Please see Appendix "D". This also shows the scanned image of the recipient information with name, signature and address.

A paper presented for filing must contain either an acknowledgment of service by the person served or proof of service consisting of a statement by the person who made service certifying the date and manner of service, the name of the person served, and the address of the place of delivery, as appropriate for the manner of service. Fed. R. App. P.25 (d) (1) (A) or (B).

The Clerk's time stamp on the notice, however, shows that the notice was received and filed on January 6, 2009. The last possible date for timely filing was (3)January 5, 2009, one day earlier. Please see

(3) "The Clerk's office with the Clerk or a deputy in attendance shall be open during business hours on all days except Saturday, Sundays and legal holidays* * *" Fed. R. Civ. P. rule 77(c).

Appendix "E". Fed. R. App. P. 4(a) allows an appeal to be docketed as filed on the date it is received by the Court.

Appellants reject Clerk's action that it is contrary to Rule 4, because it would not serve the rule's purposes, it would produce anomalous results, and it would put the District Court in the untenable position of ascertaining the intent of parties who file notices of appeal.

Mr. London argues in appellee's Brief that, "The Court has an obligation to inquire into jurisdiction issues *sua bsponte".* Citing "*Hyman v. City of Gastonia,* 466 F.3d 284 (4th Cir. 2006)", and continues with his argument, "The Court has an obligation to verity the existence of appellate jurisdiction before considering the merits. *Palmer v City National Bank of West Virginia,* 498 F.3d 236 (4th Cir. 2007)".
Mr. London relies on the Clerk of the District Court's record for his arguments, which shows it was received and filed on the 6th day of January 2009. Holding that the appeal was untimely.

The record however reveals that the notice of appeal was received in the Clerk's office of this District Court on January 05, 2009.

The petitioners' affidavit is also containing another line item to include two faxed confirmations. They were sent to both offices of the District's Clerk and Mr. London on Friday, January 2, 2009. To inform them upon the delivery of the notice that was mailed

via United States Postal Service to the attention of District Court's Clerk. Please see "Appendix F".

A copy of the Certified Mail Receipt by United States Postal Service, first-class, postage prepaid, and bears a postmark is also enclosed. Please see "Appendix G".

With no citation to authority, Ahmadi argues that we should take jurisdiction of this appeal because "[t]here is no reason that the Notice of Appeal on behalf of [Ahmadi and IOP] would not have been filed on January 5, 2009, the same day it was delivered to the Clerk of the District Court by the courier service.

What Ahmadi meant to say that the Clerk's time stamp creates a rebuttable presumption that may be overcome by appellants' proof of delivery record.

According to the law, a notice of appeal serves two functions-it informs "the parties and the tribunals concerned that the proceedings are not concluded so they may respond accordingly," and it invokes "appellate jurisdiction by accomplishing the transfer of the cause to the reviewing authority while the question sought to be reviewed remains open to appeal." *Badger v. Rice*, 124 Vt. 82, 84-85, 196 A.2d 503, 505 (1963). We require strict adherence to deadlines for filing notices of appeal primarily to serve the goal of finality. In re Lund, 2004 VT 55, 3, 7, 15 Vt. L. Wk. 201, 857 A.2d 279 (mem.); see also *Files v. City of Rockford*, 440 F.2d 811, 814 (7th Cir. 1971) (discussing development of federal rules regarding time for filing appeal, and stating that "[t]he basic

rationale for insistence upon timely filing is the necessity for providing a precisely ascertainable point of time at which litigation comes to an end"). The purposes served by a notice of appeal were accomplished by the Ahmadi's filing with District Court, and the filing occurred within the thirty days of the date of the District Court's order/judgment under the Fed. R. App. P. 4(a) (1) (A). And that this court has jurisdiction to review the judgment on a writ of certiorari.

C. There is a direct conflict between the decision below and a recent decision by the District Court

Although not cited by either party, Florida Rule of Civil Procedure 1.080(e) states in pertinent part that "[t]he date of filing is that shown on the face of the paper by . . . the Clerk's time stamp." This language was added to the rule in 1984. *See In re Amendments to Rules of Civil Procedure*, 458 So. 2d 245, 247 (Fla. 1984). At first glance, we take the plain and unambiguous language in the rule to mean that the date upon which the jurisdictional time clock begins to tick is that date reflected in the Clerk's time stamp. However, our understanding of the meaning of the rule does not resolve whether the Florida Supreme Court intended to establish a bright line rule to resolve the uncertainty surrounding the accuracy of the Clerk's time stamp. Prior to the rule's amendment, it appears that at least two Courts permitted a party to rebut the presumption that the

Clerk's time stamp reflects the actual date a paper was filed with the Clerk of the trial Court. In *Knee v. Smith*, 313 So. 2d 117, 118 (Fla. 1st DCA 1975), the First District Court of Appeal accepted jurisdiction of an appeal of an order granting summary judgment despite the fact that the notice of appeal bore a Clerk's time stamp date that made the filing of the notice one day in excess of the jurisdictional thirty-day period. In accepting jurisdiction, the Court noted that, "it appears from the affidavit submitted to this Court that the Clerk's office actually received the notice of appeal within the 30 day jurisdictional period." *Id.* at 118. Curiously, the Court accepted jurisdiction based solely on the affidavit. *Knee* was followed by two cases from the Third District Court of Appeal, in which the Court accepted jurisdiction of an appeal despite the Clerk's time stamp bearing a date that would result in the appeal being untimely. In *Pettigrew & Bailey v. Pickle,* 429 So. 2d 340 (Fla. 3d DCA 1983), the Court determined that it had jurisdiction of an appeal after holding that the trial Court did not err in amending the filing date of the notice of appeal. *Id.* at 343. There, the trial Court took evidence concerning the accuracy of the Clerk's time stamp. Relying upon the trial Court's determination pursuant to its authority to correct clerical mistakes in parts of the record, the Court concluded that the notice of appeal was timely. *Id.*; *see also* Fla. R. Civ. P. 1.540(a).1 in reaching its conclusion the Court explained that:

> We have not overlooked the contention that the trial Court erred in amending the filing date of the notice of appeal and that the appeal was therefore untimely. Upon due consideration, we find no merit in appellees' argument. Before correcting the notice to reflect the actual filing date, the trial Court weighed the evidence concerning the accuracy of the Court Clerk's date stamp and considered affidavits averring that the notice and check were delivered within the applicable filing period. A clerical mistake may be corrected by the Court.

Pickle, 429 So. 2d. at 343 (citations omitted).

Following its holding in *Pickle*, and after rule 1.080(c) was amended, the Third District in *Weintraub v. Alter*, 482 So. 2d 454 (Fla. 3d DCA 1986), held that:

> A notice of appeal is deemed filed on the date it is actually filed with the Clerk of the trial Court. This date is *presumptively* shown by the filing date which the Clerk of the trial Court stamps on the face of the notice–although this is not a conclusive showing and may be rebutted by other evidence

Id. at 457 (emphasis added).

This would be a good time for Federal Rules to articulate such a rebuttable presumption with regards to clerk's date stamp on the face of the notice.

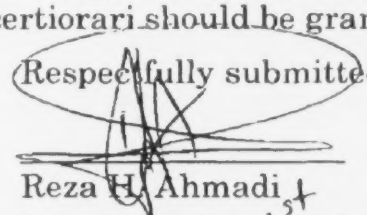
The clear and concise language of the 1984 amendment to rule 1.080(e) compels us to conclude that the Florida Supreme Court intended to establish a bright line test. To be sure, interpreting rule 1.080(e) in a bright line fashion obviates the need to engage in any fact finding beyond the information stamped on the notice of appeal. Finite rules make sense. They are easy to follow, easier to apply, and remove doubt. Clerks always have the option of paying closer attention to such details before the jurisdictional time limit expires.

Accordingly, we hold that, pursuant to rule 1.080(e), the Clerk's date stamp is dispositive on the issue of the date of filing a paper with the trial Court. In this case, the District Court Clerk's date stamp establishes that the notice of appeal was filed after the expiration of the jurisdictional time limit to file an appeal. Appellee subsequently seek to challenge the Court of Appeals for Court lack of jurisdiction over appellants' appeal. Therefore, the judgment to dismiss is denied and this appeal is granted. In so doing, we certify conflict with the Third District's opinion in *Weintraub*.

CONCLUSION

The petitioners respectfully request that the petition for a writ of certiorari should be granted.

Respectfully submitted,



Reza H. Ahmadi

Dated this the 1st day of March, 2010

AFFIDAVIT OF

Reza H. Ahmadi

The undersigned, having been duly sworn, to law, upon oath deposes and says:

1. I am over the age of eighteen (18) and that I am competent to give this Affidavit.
2. I am a U.S. Citizen, with Master of Science degree in Electrical Engineering.
3. I am the co-founder, owner and chief executive officer for Intelligent Office Products.
4. I have mailed the notice of appeal with check to the United States District Court clerk's office through U. S. Postal Service, first-class, certified mail, postage prepaid, and bear a postmark. See "Appendix G".
5. I have faxed the confirmation about the certified mail to each office of the District Clerk, and Mr. London on Friday, January 2, 2009. See "Appendix F".
6. I have contacted the U. S. Postal Service, requested and obtained a statement on the proof of delivery information. See "Appendix D".

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in this Affidavit is true and correct.

Dated this the 1st day of March, 2010

Reza H. Ahmadi

APPENDIX A – DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.
DECIDED DECEMBER 23, 2009

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 09-1082

STATIC CONTROL COMPONENTS, INCORPORATED, Plaintiff - Appellee,

v.

REZA H. AHMADI; INTELLIGENT OFFICE PRODUCTS, INCORPORATED, Defendants – Appellants.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas David Schroeder, District Judge. (1:07-cv-00281-TDS-RAE)

Submitted, December 17, 2009
Decided: December 23, 2009

Before WILKINSON, NIEMEYER, and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.
Appendix A

Reza H. Ahmadi, Appellant Pro Se. William L. London, III, Sanford, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Reza H. Ahmadi and his corporation Intelligent Office Products, Inc. seek to appeal the district court's final order entering a default Judgment against them. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a) (1) (A), unless the district court extends the appeal period under Fed. R. App. P. 4(a) (5), or reopens the appeal period under Fed. R. App. P. 4(a) (6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dept. of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229' (1960)).

The district court's order was entered on the docket on December 4, 2008. The notice of appeal was filed on January 6, 2009. Because Appellants failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal.

We dispense with oral argument because the facts and legal contentions are adequately presented in the

materials before the court and argument would not aid the decisional process.

DISSMISSED

FILED: December 23, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1082
(1:07-cv-00281-TDS-RAE)

STATIC CONTROL COMPONENTS, INCORPORATED, Plaintiff - Appellee

v.

REZA H. AHMADI; INTELLIGENT OFFICE PRODUCTS, INCORPORATED, Defendants-Appellants

---

JUDGEMENT

In accordance with the decision of this Court, this appeal is dismissed.

This judgment shall take effect upon issuance of this Court's mandate in Accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix A

APPENDIX B – DECISION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA. DECIDED DECEMBER 4, 2008

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STATIC CONTROL COMPONETS, INC.,)
Plaintiff,)
)
v.)
) 1:07CV00281
INTELLIGENT OFFICE PRODUCTS, INC.)
and REZA H. AHMADI, a/k/a)
"RAY AHMADI")
Defendants.)

ORDER

On July 1, 2008, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. §636. Objections were filed by Defendant Reza H. Ahmadi on behalf of both the corporate and individual Defendant (Docs. 51, 52 and 53) but have been stricken from the record for having been improperly filed for the reasons set forth by the Magistrate Judge (Doc. 54). No other objections were filed timely. Therefore, the court need not make a de novo review,

and the Magistrate Judge's Recommendation is hereby adopted.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Summary Judgment (Doc. 32) is GRANTED, and also a default judgment based on the entry of default is entered against Defendants Intelligent Office Products, Inc. and Reza H. Ahmadi, a/k./a "Ray Ahmadi", and that judgment against said Defendants is hereby entered holding them jointly and severally liable to Plaintiff Static Control Components, Inc. in the amount of $486,106.66, plus prejudgment interest in the amount of 1 ½ % per month, compounded monthly, calculated on the amount of $485,956.66 from march 6, 2007 to December 4, 2008, the date of judgment, such interest being $177, 756.12, with the total amount of the judgment being $663,862.78, plus post-judgment interest on the total amount of the judgment at the legal rate of .93 percent per annum, computed daily and compounded annually from the entry of judgment until paid, together with the costs of this action.

2. Plaintiff's Motion for Summary Judgment seeking dismissal of Defendant IOP's counterclaims against Plaintiff (Doc. 32) is GRANTED, and also finding dismissal of the counterclaim appropriate under Fed. R. Civ. P. 41 (c), the Counterclaim is hereby DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Defendant

Intelligent Office Products, Inc. and Defendant Reza H. Ahmadi are hereby ordered to return all documents or materials belonging to Static Control Components, Inc., to it within sixty days.

/s/ Thomas D. Schroeder
United States District Judge

December 4, 2008

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STATIC CONTROL COMPONETS, INC.,)
Plaintiff,)
)
v.)
) 1:07CV00281
INTELLIGENT OFFICE PRODUCTS, INC.)
and REZA H. AHMADI, a/k/a)
"RAY AHMADI")
Defendants.)

JUDGMENT

For the reasons set out in an Order entered contemporaneously with this Judgment,

IT IS ORDERED AND ADJUDGED that Default Judgment against Defendants Intelligent Office Products, Inc. and Reza H. Ahmadi, a/k/a "Ray Ahmadi," is hereby entered holding them jointly and severally liable to Plaintiff Static Control

Appendix B

Components, Inc., in the amount of $485,106.66, plus prejudgment interest in the amount of 1 ½% per month, compounded monthly calculated on the amount of $485,956.66 from March 6, 2007 to December 4, 2008, the date of judgment, such interest being $177,.756.12, with the total amount of the judgment being $663,862.78, plus post-judgment interest on the total amount of the judgment at the legal rate of .93 percent per annum, computed daily and compounded annually from the entry of judgment until paid, together with the costs of this action.

/s/ Thomas D. Schroeder
United States District Judge

December 4, 2008

Appendix B

APPENDIX C – FINDINGS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE, DECIDED AUGUST 4, 2008

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STATIC CONTROL COMPONETS, INC.,)

Plaintiff,)
)
v.)
) 1:07CV00281
INTELLIGENT OFFICE PRODUCTS, INC.)
and REZA H. AHMADI, a/k/a)
"RAY AHMADI")
Defendants.)

ORDER

This matter comes before the Court sua sponte. Defendant Reza H. Ahmadi has Filed objections to the Magistrate Judge's July 7, 2008 Recommendation, exhibits, and a motion seal the exhibits. (Docket Nos. 51, 52 and 53.) These documents are deficient for a number of reasons. First, the documents lack any certificate of service. Second, and more importantly, these documents are filed in contravention of this Court's April 14, 2008 order. There, Defendant Intelligent Office Products, Inc. was ordered to obtain

counsel to represent him or to enter his own pro se appearance, and was told that the Court would not recognize any paperwritings submitted by him unless he had complied with that order. To date, neither Defendant has complied with the April 14, 2008 order.

In addition, Defendant Ahmadi continues to act in violation of that order by attempting to submit documents on behalf of Intelligent Office Products, Inc., when he is not allowed to do so as was explained in the April 14, 2008 order. Therefore, these documents are improper if submitted on behalf of the corporation, and also improper if submitted on behalf of Defendant Ahmadi for the reasons stated above. For all these reasons,

IT IS ORDERED that Docket Nos. 51, 52, 53 are hereby stricken.

Russell A. Eliason
United States Magistrate Judge

August 4, 2008

Appendix C

APPENDIX D – PROOF OF DELIVERY RECORD FROM UNITED STATES POSTAL SERVICE

Date: 12/28/2009

Fax Transmission To: RAY AHMADI
Fax Number: 281-345-9642

Dear RAY AHMADI:

The following is in response to your 12/28/2009 request for delivery information on your Certified Mail™ item number 7008 1140 0003 6769 6903. The delivery record shows that this item was delivered on 01/05/2009 at 01:52 PM in GREENSBORO, NC 27401. The scanned image of the recipient information is provided below.

Signature:	**Donna Lloyd**
Address of Recipient:	**324 W. Market #401**

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely

United States Postal Service

APPENDIX E – NOTICE OF APPEAL

Wednesday, December 31, 2008

FILED

Middle District of North Carolina
Atten: Office of Clark
324 West Market Street, Suite 401
Greensboro, NC 27401

JAN – 6 2009
IN THIS OFFICE
Clerk U.S. District Court
Greensboro, N.C
By .....

Regarding: Letter of Appeal (Case # 1:07CV00281)

I am the business owner for Intelligent Office Products (IOP), a small business, certified HUB with State of Texas. I am writing to you to appeal the judgment entered against my company "IOP", and myself "Ahmadi" for improper filling of the objections. My company was put out of business by Static Control's, (Plaintiff), *illegal activity of selling defective products to IOP*, and continuing deceptive behavior and denial. IOP lost the majority of it's customers as a result, and became financially devastated. I could not continue paying my attorney who was handling this case, and could not appear in court for a hearing without legal advisor.

Intelligent Office Products is a remanufacturing for toner cartridges since 1995, certified by the Int'l Imaging Technology Council. For a number of years, Intelligent Office Products purchased products (RAW Materials) from Static Control for inclusion in its

Appendix E

products (rebuilding toner cartridges) for sale.

Starting in late 2004 continuing into 2006, IOP continued to purchase substantial amounts of product from Static Control and experienced greatly increased complaints from its customers about the quality of the products being supplied. The toner that IOP had been getting for years from Static was changed without notice to IOP and was of a different kind than previously, thereafter, IOP began receiving customer complaints and experiencing high return of its products due to problems caused by the toner being supplied by Static, majority of IOP's accounts were lost due to these quality problems caused by Static's products.Beginning in early 2005 Intelligent Office Products IOP questioned Static Control representatives about these issues and concerns. *Static told IOP that they had never seen these issues before and that IOP was the only company that was experiencing these problems.* Static told the same story to other customers.

Early in these discussions, Static's management sent sales representatives and technicians to see how IOP built cartridges. Static made a few suggestions of changes to improve the process which IOP promptly made but the problems continued. Static subsequently requested that IOP send cartridges to Static for testing and diagnostics and IOP promptly did so. Static never provided IOP with the results from this

investigation. Static told IOP that Static could duplicate the problem but did not know how to solve these problems. When IOP asked Static for an update, Static told IOP the technicians had left the company and did not finish the testing. Static also told IOP that the cartridges could not be found to continue the testing. After an extended period of attempting to work out these problems with Static, IOP purchased toner from another vendor and the problems ended. As a result of the problems above and the products being received from Static Control, Intelligent Office Products IOP lost sales in excess of $4 million as well as it's major accounts starting in the year 2005. In addition, Intelligent Office Products was required to refund to its customers in excess of $390,000 in connection with sales that it made containing defective product provided by Static.

Respectfully Yours,

RECEIVED
In This Office
JAN – 6 2009
CLERK U.S. DISTRICT COURT
GREENSBORO, N.C.

Reza Ahmadi

Reza Ahmadi
CEO
Intelligent Office Products

7302 Wooded Valley Dr. Houston, Texas 77095 Tel: (281) 249-1100 Fax: (281) 249-1110 www.intelligentofficeproducts.com

Appendix E

APPENDIX F – FAX CONFIRMATIONS

TRANSMISION VERIFICATION REPORT

TIME:	01/02/2009 10:10 AM
NAME:	COPPERFIELD FEDEX 21
FAX:	281-463-6073
TEL:	281-463-8433
SER.#:	00K7N252375

DATE TIME	01/02/09 10:10
FAX NO.	13363326060
DURATION	00:00:38
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

INTELLIGENT OFFICE PRODUCTS, IC.

P.O.BO 79371

HOUSTON TEXAS, 77279 - 9371

FACSIMILE TRANSMITAL SHEET

TO:	**FROM:**
Mr. John S. Brubaker, Clerk of Court	Reza Ahmadi
COMPANY:	**DATE:**
United States District Court Middle District of North Carolina	1/2/2009
FAX NUMBER:	**TOTAL PAGES**
336-332-6060	2
PHONE NUMBER:	**SENDER FAX**
336-332-6000	

RE:
Appeal

□URGENT □FOR REVIEW □PLEASE COMENT
□PLEASE REPLY □PLEASE RECYCLE

NOTES.COMMENTS

Please see the letter of appeal attached, the original letter has been sent out through Certified U.S. Postal Service.

Respectfully yours,

Reza H. Ahmadi
281-249-1100

_-_-_-

INTELLIGENT OFFICE PRODUCTS, IC.

P.O.BO 79371

HOUSTON TEXAS, 77279 - 9371

FACSIMILE TRANSMITAL SHEET

TO:	**FROM:**
Mr. William L. London	Reza Ahmadi
COMPANY:	**DATE:**
Static Control Components	1/2/2009
FAX NUMBER:	**TOTAL PAGES**
919-776-2333	2
PHONE NUMBER:	**SENDER FAX**
919-774-3808	
RE:	
Appeal	

□URGENT □FOR REVIEW □PLEASE COMENT
□PLEASE REPLY □PLEASE RECYCLE

NOTES.COMMENTS

Please see the letter of appeal attached, the original letter has been sent out through Certified U.S. Postal Service.

Respectfully yours,

Reza H. Ahmadi
281-249-1100

Appendix F

APPENDIX G – CERTIFIED MAIL RECEIPT, WITH TRACK & CONFIRMATION

UNITED STATES POSTAL SERVICE®

Track & Confirm

Search Results

Label/Receipt Number: **7008 1140 0003 6769 6903**
Status: **Delivered**
your item was delivered at 1:52 pm on January 05, 2009 in GREENSBORO, NC 27401. A proof of delivery record may be available through your local Post Office for a fee.
Additional information for this item is stored in files offline.

U.S. Postal Service ™	
CERTIFIED MAIL™ RECEIPT	
Domestic Mail Only; First Class	
Greensboro NC 27401,	
Postage	*$0.42*
Certified fee	*$2.70*
Return Receipt fee	*$2.20*
Total Postage & fee	*$5.32*
7008 1140 0003 6769 6903	
Sent To: *US District Ct.*	**DEC 31 2009**
Street: *324 W. Market Street Ste 401*	
City, State, Zip: *Greensboro, NC 27401*	
PS Form 3800 August 2006	

Appendix G

Supreme Court, U.S.
FILED

091166 MAR 3 - 2010

OFFICE OF THE CLERK

NO. _____

IN THE

Supreme Court of United States

Reza H. Ahmadi; Intelligent Office Products, Inc.,

Appellants

- *Petitioners,*

VS.

Static Control Components, Incorporated, Appellee

-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SUPPLEMENTAL APPENDIX

Reza H. Ahmadi

Owner, Founder and CEO

Intelligent Office Products, Inc.

7302 Wooded Valley Dr.

Houston, Texas 77095

713-515-6149

SUPPLEMENTAL APPENDIX – MEMORANDUM OPINION AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE ELIASON, DECIDED JULY 1, 2008

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STATIC CONTROL COMPONETS, INC.,)

Plaintiff,)
)
v.)

)1:07CV00281
INTELLIGENT OFFICE PRODUCTS, INC.)
and REZA H. AHMADI, a/k/a)
"RAY AHMADI")
Defendants.)

MEMORANDUM OPINION AND RECOMMENDATION OF MAGISTATE JUDGE ELIASON

This matter came before the undersigned United States Magistrate Judge Russell A. Eliason at a hearing conducted on May 30, 2008 in Winston-Salem, North Carolina. In a May 19, 2008 order, the Defendants were ordered to appear to show cause why judgment should not be entered against them and the Counterclaim dismissed. Entries of default

had previously been made against both Defendants. Also, at the hearing, the Court considered Plaintiff's motion for summary judgment. Appearing for the Plaintiff was William L. London, General Counsel for Plaintiff, Static Control Components, Inc. The Defendants did not appear nor did any representative for the Defendants appear.
After reviewing the record, including the Plaintiff's Motion & Memorandum for Summary Judgment and Supplemental Memorandum in Support of Motion for Summary Judgment, the Undersigned hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff, Static Control Components, Inc. ("Static Control") is a Corporation organized and existing under the laws of North Carolina with its principal place of business in Sanford, Lee County, North Carolina. Static Control is a leading supplier of toner, parts and components for use in repairing and recycling laser printer toner cartridges ("cartridges"), a business often referred to as the cartridge remanufacturing industry. *Complaint, Paragraph 1.*

2. Defendant Intelligent Office Products, Inc. (hereinafter"IOP") is a corporation organized and existing under the laws of Texas with its principal place of business in Houston, Texas. IOP cartridges, disassemble them, clean them, replace worn out

components, and then rebuild the cartridges. The rebuilt or remanufactured cartridges are then refilled with toner. These remanufactured cartridges are sold at a discount to the price of a new original equipment manufacturer's (OEM) cartridge. *Complaint, Paragraph 2; Answer, Paragraph 2.*

3. Defendant Reza H. Ahmadi, a/k/a "Ray Ahmadi", ("Mr. Ahmadi") is a natural person who is a resident of Harris County, Texas and resides in Houston, Texas. Mr. Ahmadi is the owner of IOP. *Complaint, Paragraph 3; Answer, Paragraph 3.*

4. Initially, Mr. Ahmadi and his then partner, Mr. Thomas Havron ("Mr. Havron"), owned two companies, Intelligent Interface and a subsidiary which became IOP.(*Ahmadi Dep. Vol. I 7: 7-25.*)[1] Intelligent Interface sold and serviced computers and printers. (*Sciba Dep. 6: 13-18.*)[2] Mr. Ahmadi focused on servicing printers and computers while Mr. Havron focused on sales and running the remanufacturing part of the business which later became IOP. (*Sciba Dep. 10: 7-25.*)

5. In 1994, Mr. Ken Sciba ("Mr. Sciba") was hired as production manager of the remanufacturing business. Mr. Sciba had prior experience in

---

1 Excerpts from Reza H. Ahmadi Deposition Transcript Vol. I, Exhibit 1 to Plaintiff's "Memorandum of Law in Support of Motion for Summary Judgment."

2 Excerpts from Kenneth Sciba, Jr. Deposition Transcript, Exhibit 2 to Plaintiff's "Memorandum of Law in Support of Motion for Summary Judgment."

remanufacturing and was later promoted to general manager of the business. *Id.* Mr. Ahmadi had no experience in remanufacturing toner cartridges. (*Sciba Dep. 26: 7-12.)*

6. On March 6, 2001, IOP applied for a credit account with Static Control. The application for credit was done using Static Control's Standard Credit Agreement ("the Agreement") and signed by Mr. Havron as President of the company. The Agreement includes a copy of the standard "Static Control Terms and Conditions" ("the Terms") which are also printed on every static control invoice. See *Affidavit of Renee Haire at Paragraphs 5 and 6.* [3]

7. By signing the Agreement, IOP agreed "to abide by the terms and conditions set out on all invoices which may be amended from time to time ." IOP also agreed that "all charges incurred after the extension of credit shall be considered due and payable according to the terms on the invoice." See *Affidavit* Of *Renee Haire at Paragraph 6.*

8. The Terms, as printed on all of Static Control's invoices, provide that "Any outstanding balance not paid on time shall bear interest at the rate of 1 ½% per mouth, compounded monthly." See *Affidavit* of Renee Haire at Paragraph 5.

---

3 Ms. Haire is the Credit Control Coordinator at Static Control. She filed an affidavit (docket no. 48), including copies of the Agreement (Ex. B) and the Terms (Ex A), Ahmadi's guarantee (Ex. C), a summary of invoices due (Ex. D), and other documents. She has another affidavit Attached to Plaintiff's Memorandum of Law in Support Of Motion for Summary Judgment as Exhibit 9.

9. In 2003 Mr. Ahmadi purchased Mr Havron's interest in IOP. (Ahmadi Dep. Vol. I 8: 9-11.) Mr. Ahmadi's wife, Teresa Cox Ahmadi became president of IOP about that time. (Cox –Ahmadi Dep. 6: 5-9.) [4] In December 0f 2004, Mr. Sciba left IOP to take a position with another remanufacturer. (*Ahmadi Dep. Vol. I 17:1-12.)* When Mr. Sciba was the general manager, IOP purchased various products from Static Control, including universal toners. (*Sciba Dep. 18: 2-7.)* During the time that Mr. Sciba was IOP's general manager, IOP received few complaints about the quality of the products produced by IOP. (*Sciba Dep. 25: 3-21.)* Up until the time Mr. Sciba left, Mr. Ahmadi had no involvement in the remanufacturing of the toner cartridges.

10. After Mr. Sciba left, Mr. Ahmadi decided to make a number of significant changes. He replaced Mr. Sciba with a Mr. Torres. Mr. Torres had been Employed by IOP as a sales person prior to Mr. Sciba leaving IOP. Mr. Torres had been fired by Mr. Ahmadi for poor sales performance, and then re-hired by Mr. Ahmadi to be the general manager over both sales and production. (*Sciba Dep. 36: 11-25.)*

11. Mr. Ahmadi and Mr. Torres changed the cartridge remanufacturing process from an assembly line (where each employee repeated the same

---

4 Excerpts from Teresa Cox- Ahmadi Deposition Transcript, Exhibit 3 to Plaintiff's "Memorandum of Law in Support of Motion for Summary Judgment"

function over and over) to where several employees examined each cartridge to a system where cartridges were remanufactured entirely by one employee. (*Cross Dep. 23:4-21*[5]*; Ahmadi Dep. Vol. I 20;5-18.)* In 2005, IOP began to receive an increasing number of complaints from its customers as to the quality of the cartridges that had been purchased from IOP.

12. The defects in IOP's cartridges were related to the build of the cartridges, not the quality of the components purchased from Static Control. A number of the complaints received by IOP involved cartridges that leaked toner. Leaking occurs when the cartridge has not been rebuilt correctly, and is not a function of quality of the toner. (*Espino Dep. 32:25-33:24.)*[6] IOP also sold some cartridges without having any toner in them at all. *Exhibit 6* to *Plaintiff's "Memorandum in Support of Motion for Summary Judgment"*. In addition, IOP changed the quality of the components that is used, reusing the components in the used cartridges bought from brokers that it had previously replaced with new aftermarket components. (*Cross Dep. 15:17-16:5; Espino Dep. 19: 2-23.)* Furthermore, IOP bought the

---

5 Excerpts from Vicki Cross Deposition Transcript, Exhbit 4 to Plaintiffs "Memorandum of Law in Support of Motion for Summary Judgment."

6 Excerpts from Yvonne Espino Deposition Transcript. Exhibit 5 to Plaintiff's "Memorandum of Law In Support of Motion for Summary Judgment."

wrong types of used cartridges from brokers and it tried to make them work anyway. (*Espino Dep. 9: 4-24.)* Finally, IOP sold customers lower quality non-virgin (previously used) cartridges when it advertised that the cartridges were made from higher quality virgin (not previously used) cores. (*Espino Dep. 11: 5-12:15.)*

13. Mr. Ahmadi's changes impacted IOP's business in other ways. Mr. Ahmadi increased the price of IOP's cartridges without warning to customers. (*Cross Dep. 15:7-15;Espino Dep. 19:2-12.)* IOP failed to stock enough inventory to support customers' requests for cartridges. (*Espino Dep. 16: 5-25.)* In one instance, Mr. Ahmadi was rude to a good customer. (*Espino Dep. 19: 16-23.)* Mr. Ahmadi complained that IOP's sales people were not selling enough products for him to be able to pay Static Control. (Espino Dep. 21: 13-18.) As a result of these business problems, IOP began to lose some of its customers and its revenues declined. (*Espino Dep. 19: 2-21:18.)*

14. In 2005 IOP fell behind in its payments to Static Control. On September 30, 2005, in an effort to convince Static Control to continue to extend IOP additional credit, Mr. Ahmadi knowingly and willingly executed a Personal Guarantee in which he pledged his personal resources to cover any debt incurred by IOP to Static Control. (*See Exhibit 7 to Plaintiff's "Memorandum in Support of Motion for Summary Judgment"; Ahmadi Dep. Vol. I 108: 1*

109:25). When he signed the Personal Guarantee, IOP was purchasing 85% of its supplies, including toner, from Static Control. Mr. Ahmadi, at the time he signed the guarantee, did not raise any complaints regarding the quality of components or toner IOP purchased from Static Control. *(Affidavit of Renee Haire.)*

15. In his deposition Mr. Ahmadi answered questions regarding the Personal Guarantee as follows:

"Q. Did you sign Exhibit Number 2 in part to help allay those concerns of Static Control, to satisfy those concerns?

A. To be honest with you, I'm the one offered this.

Q. Okay. You offered this to?

A. I offered this to Renee. I would guarantee the moneys owed, I would take care of...

Q. At the time you made that offer, did you intend to pay the amount that was then due?

A. Yes.

Q. And did you intend to pay the amount that would be due in the future for additional products that they sold you on credit?

A. Yes."

(Ahmadi Deposition Volume I 109:7-21)

In response to "Plaintiff's First Request for Admissions", Mr. Ahmadi admitted that he knowingly and willingly signed the Personal Guarantee (Request Nos. 5&6), that he did so before a Notary Public in the state of Texas (Request No. 7)

and that he never provided Static Control with written notice of termination of his obligation to guarantee payment for Static Control products shipped to IOP after September 30, 2005 (Request No. 8).

16. Despite the signing of the guarantee by Mr. Ahmadi, IOP continued to fall behind on payments for newly ordered products. IOP's only payments after the guarantee was signed were four $5,000 payments in early 2006 in an effort to catch up on its existing debt. Mr. Ahmadi continually represented to Static Control that IOP was in the processof obtaining new business or new financing that would enable it to pay the monies it owed to Static Control. Mr. Ahmadi did not assert quality concerns as a reason for not making required payments. *See Affidavit of Renee Haire at Paragraph 9.*

17. In August of 2006, Static Control stopped shipping product to IOP. Static Control made demand of IOP for payment in September of 2006, but IOP failed refused to pay for the products. Static Control turned the matter over to a collection agency in an effort to collect the debt. *See Affidavit of Renee Haire at Paragraph 10.*

18. At the end of 2006, IOP owed Static Control the principal amount of $486,106.66. This principal amount was the amount dude and owing for products purchased by IOP from Static Control that were delivered to and used by IOP, but not paid for. (That principal amount also included six processing

fees for returned checks. The charging of this fee is allowed by N.C.G.S. 25-3-506.While these fees are part of the principal, no interest has been charged on these fees.) An invoice accompanied each order sent to IOP. [7] *See Affidavit of Renee Haire at Paragraph 11.*

19. Static Control filed a Complaint on March 6, 2007 in the General Court of Justice, District Court Division, Lee County, North Carolina seeking judgment in the amount of $486,106.66, representing the unpaid balance due and owing for products that Static Control had sold and delivered to IOP together with accrued interest and costs as allowed by its invoices. Static Control sought a similar judgment against Mr. Ahmadi based upon his personal guarantee of IOP's debt to Static Control.

20. Both the Agreement and the Terms require IOP to pay interest on any unpaid balance at the rate of 1 ½% per month, compounded monthly. For the purpose of calculating prejudgment interest, the due date is the date on which the complaint was filed in this case, March 6, 2007 (although it could have been, no interest was added to the principal amount prior to this date). The interest is calculated, in accordance with the Terms, at the rate of 1 ½% per month, compounded monthly. The amount on which prejudgment interest was charged is $485, 956.66. The amount of prejudgment interest, from

---

[7] A list of the unpaid invoices is attached as Exhibit D to the Affidavit of Renee Haire and is fully Incorporated herein by reference.

March 2007 until the end of May 2008, totals $121, 601.94. See *Affidavit of Renee Haire at Paragraph 12.*

21. IOP and Mr. Ahmadi removed the case to this court on April 11, 2007.They also filed an Answer to the Complaint in which IOP alleged several Counterclaims against Static Control based on its allegation that products sold by Static Control to IOP were defective.

22. IOP does not dispute that it purchased supplies and toner from Static Control nor does IOP dispute that it has failed to pay Static Control for all the supplies and toner it purchased. *Ahmadi Deposition Volume I 111:1-112:15* Rather, IOP claims that some of the products and toner it purchased from Static Control were defective and that it therefore does not have to pay for them. (*Ahmadi Dep. Volume II 176:16-179:11.)*[8]

23. IOP, when given the chance to do so, was completely unable to describe how any defects in Static Control's components were related to cartridges returned to IOP by its customers. In response to interrogatories submitted by Static Control, IOP Responded as follows:

"Interrogatory No.6 With respect to each returned cartridge accounted for in response to Interrogatory No.4 above which, if any, of the specified "defect(S)" does IOP attribute to the toner

---

8 Excerpts from Reza H. Ahmadi Deposition Transcript Vol. II, Exhibit 10 to Plaintiff's "Memorandum of Law In Support of Motion for Summary Judgment."

(s) purchased by IOP from Static Control? Provide each and every reason why IOP attributes such cartridge returns to the toner (s) purchased from Static Control.

Answer: *Plaintiff is unable to respond to this interrogatory since typically customers did not specify the type of defect.*

Interrogatory No. 7. With respect to each returned cartridge accounted for in response to Interrogatory No.4 above, which, if any, of the specified "defect (s) " does IOP attribute to any component other than toner (s) purchased by IOP from Static Control? Provide each and every reason why IOP attributes such cartridge returns to the identified components purchased from Static Control.

Answer: *Plaintiff is unable to respond to this interrogatory since typically customers did not specify the type of defect.*

Interrogatory No. 8. If the answer to Interrogatory No.7 above is other than "none", please identify the allegedly defective component by product number or SKU for each such returned cartridge.

Answer: *Plaintiff is unable to respond to this interrogatory since typically customers did not specify the type of defect."*

24. Additionally, IOP was unable to establish or quantify its damages. In response to interrogatories submitted by Static Control, IOP failed to provide any proof of damages or any damage

estimate:

"**Interrogatory No. 1.** What is the amount of damages claimed by IOP against Static Control? Please provide both the amount of damages that IOP claims against Static Control and the basis for the calculation of the amount provided.

Answer: *The amount of damages claimed depends upon the measure of damages adopted by the Court for use in this case. These damages may include either: lost sales revenues from defective returns of cartridges or lost profits due to defective product returns."*

25. On February 8, 2008, counsel for IOP and Mr. Ahmadi, Michael Patrick ("Mr. Patrick"), filed a motion to withdraw contending that he had not been paid as the defendants had contracted to do.

26. On March 13, 2008, Plaintiff filed a motion for Summary Judgment requesting that the Court find IOP and Mr. Ahmadi jointly and severally liable to Plaintiff in the amount of $486, 106.66 plus prejudgment interest of $140, 637.74 and post judgment interest and costs; that the personal guarantee signed by Mr. Ahmadi is a guaranty of payment and that Mr. Ahmadi, personally and individually is immediately liable to Static Control for the amount owed by IOP to Static Control and that the Court dismiss IOP's Counterclaim.

27. On April 14, 2008, the Court provisionally granted Mr. Patrick's motion to withdraw with respect to his representation of Mr. Ahmadi. Mr.

Patrick's representation was limited "to the extent that he need not perform any active representation for Defendant Ahmadi except to receive pleadings, motions, orders and other paperwritings from the Court and Plaintiff." Mr. Ahmadi himself was instructed to, within twenty days, either substitute new counsel or make an entry of appearance to represent himself. Mr. Ahmadi has subsequently failed to either retain substitute counsel of make an entry of appearance.

28. In the same April 14, 2008 order, the Court provisionally granted Mr. Patrick's motion with respect to his representation of IOP, but limited his Representation to appearing "in court as directed, and receive all papers in this action on behalf of Defendant IOP and transmit them to Defendant IOP at its last known address." The Court ordered IOP to immediately retain new counsel and to have counsel enter an appearance within twenty days. IOP has subsequently failed to retain substitute counsel.

29. On May 19, 2008, the Court entered an Order directing the Clerk to make entries of default against both defendants for their failure to comply with the Court's April 14, 2008 order. The Court also ordered the parties to appear before the Court on May 30, 2008 for the Defendants to show cause why default judgment should not be entered against them, why Defendant IOP's Counterclaim against Plaintiff should not be dismissed for failure to prosecute and failure to obey court orders, and

why Plaintiff's Motion for Summary Judgment should not be granted.

30. On May 20, 2008, the Clerk, pursuant to the Court's order, entered default against IOP and Mr. Ahmadi.

31. On May 29, 2008, Mr. Ahmadi faxed the Court and acknowledged that he had received the Court's May 19th order. Mr. Ahmadi also advised that he was aware of the May 30th hearing. In addition, Mr. Ahmadi stated that neither he nor IOP had retained substitute counsel. Finally, Mr. Ahmadi stated that he would not be able to attend the hearing and that he understood that the hearing would take place without him.

32. On May 30, 2008, the Court held a hearing for the defendants to Show Cause why judgment should not be entered against them and Defendant IOP's counterclaim dismissed. The defendants did not appear.

Conclusions Of Law

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. 1332(a) (1) and has personal jurisdiction over all the parties to this case.

2. Venue in this jurisdiction is proper under 28 U.S.C. 1391.

I. Summary Judgment Standard

3. Summary judgment is appropriate where an examination of the pleadings, affidavits and other

materials before the Court demonstrates that there is no genuine issue of material fact, thus entitling the moving party to judgment as a matter of law. Fed. R. Civ. P. 56 (c); Celotex Corp. V. Catrett, 477 U.S. 317, 322-23; 106 S. Ct. 2548, 2552 (1986). The "material facts" are those identified by controlling law as essential elements of claims asserted by the parties. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248; 106 S. Ct. 2505, 2510 (1986).

4. When the moving party has carried its burden, the nonmoving party must come forward with evidence showing more than some "metaphysical doubt" that genuine and material factual issues exist. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586; 106 S. Ct. at 2511. A more scintilla of evidence is insufficient to circumvent summary judgment. *Anderson, 477 U.S.* at *252*; *106 S. Ct.* at *2511.* Instead, the nonmoving party must convince the court that, upon the record taken as a whole, a rational Trier of fact could find for the nonmoving party. *Id.* at 248-249; 106 S. Ct. at 2511. Trail is unnecessary if " the facts are undisputed, or if disputed, the dispute is of no consequence to the dispositive section. *Mitchell v. Data General Corp.*, 12F.3d. 1310, 1315-16 (4th Cir. 1993)

II. THERE IS NO GENUINE ISSUE OF MATERIAL FACT WITH RESPECT TO PLAINTIFF'S CLAIMS

A. IOP Breached its Contract to Pay for the Goods.

5. The agreement between IOP and Static Control is governed by North Carolinalaw. In order to prevail on a breach of contact claim under North Carolina law, Static Control must establish (1) the existence of a valid contract and (2)breach of the terms of that contract. *Poor v. Hill,* 138 N.C. App. 19 530 S.E. 2d 838 (2000). In addition, a breach of contract is actionable only if the Breach was material in nature. *Long v. Long,* 160 N. C. App. 664, 588 S.E. 2d.1 (2003) (citing *Fletcher v. Fletcher,* 123 N.C. App. 744, 474 S.E. 2d.802 (1996), *disc. Review denied,* 345 N.C. 640, 483 S.E. 2d. 706 (1997).

6. Static Control has established the existence of a valid contract. IOP admits that it purchased "numerous products" from SCC (*Answer, Paragraph 7*).These purchased were pursuant to a credit account which has terms and conditions (*Affidavit of Renee Haire at Paragraph 5, 6 and Exhibits)* and the purchase were controlled by the terms on the invoices (*Affidavit of Renee Haire at Paragraph 6).* Together, the credit account and the invoices for products delivered to IOP constitute a valid, enforceable contract for the sale of goods between the parties.

7. IOP breached the terms of the contract. As noted above, IOP admits that it purchased " numerous products" from Static Control. IOP did not dispute that it did not pay in full for these purchases. This refusal to pay continued despite repeated

written and verbal demands from Static Control for IOP to pay as agreed (*Affidavit of Renee Haire at Paragraphs 10 and 11).*

8. This breach by IOP is material in nature. A breach is material if it "substantially Defeats the purpose of the agreement or goes to the very heart of the agreement or can be characterized as a substantial failure to perform". *Long, supra.* In a contract purchase of goods, the failure to pay for the goods that are the subject of the agreement is a material breach. *Sports Quest, Inc. v. Dale Earnhardt, Inc., Nos. O2 CVS 2200, 2004* WL 254729, 2004 NCBC 3 (N. C. Super. Feb. 12, 2004) (not reported in S.E. 2d).Thus, IOP's failure to pay for the products that it purchased from Static Control is a material breach of the sales contract.

9. As a result of this breach, Static Control has been damaged by not being paid for Products that were furnished to IOP. IOP does not dispute the amount of the claim; it only makes claims about the quality of Static Control's products. *(Ahmadi Dep. Vol. I 111:23-112:1.)*

10. IOP is liable for these damages, with prejudgment interest. IOP owes Static Control the principal amount of $486, 106.66 for the products purchased by IOP from Static Control that were delivered to and used by IOP but were not paid for . This includes $150 for service fees for worthless checks which Static Control is authorized to assess by N.C.G.S. 25-3-506. An invoice accompanied each

order sent to IOP. (See *Affidavit of Renee Haire at Paragraph 12.)*

11. Each invoice contained the Terms which specify that "any outstanding balance not paid on time shall bear interest at the rate of 1 ½% per month, compounded monthly". (See *Affidavit of Renee Haire at Paragraph 5 and 12.)* The due date is calculated as the date of the filing of the complaint in this action, which is March 6, 2007. Prior to that date, no interest was charged on the debt. The balance on which interest was calculated is $485,956.66. The amount of the prejudgment interest, from March 2007 until the end of May 2008, is $121, 601.94. (See *Affidavit of Renee Haire at Paragraph 12.)*

B. Mr. Ahmadi is Personally Liable for IOP's Debt to Static Control.

12. The personal Guarantee signed by Mr. Ahmadi is a valid agreement immediately enforceable by Static Control on account of IOP's failure to pay its debt.

13. The personal Guarantee signed by Mr. Ahmadi is a guaranty of payment. "AGuaranty of Payment is an absolute promise by the guarantor to pay the debt at Maturity if it is not paid by the principal debtor." *EAC Credit Corp. v. Wilson, 281 N.C. 140, 187 S.E. 2d 752 (1972).* Mr. Ahmadi admits signing the personal guarantee. (*Answer, Paragraph 9; Ahmadi Dep. Vol. I 108:8-*

109:21.) In the agreement, the promise to pay amounts owed by IOP to Static Control is absolute and unconditional: "I, Ray Ahmadi, do hereby personally guarantee any and all debts incurred by *Trade Debtor (IOP) to Static Control Components, Inc."* This contract language is unconditional and constitutes a guaranty of payment.

14. Because Mr. Ahmadi signed the personal Guarantee, additional credit was extended to IOP, credit which otherwise would not have been extended. (*Affidavit of Renee Haire at Paragraph 9.)* This grant of additional credit is sufficient consideration to support the guaranty contract. In a guaranty contract " a consideration moving directly to the guarantor is not essential. The promise is enforceable if a benefit to the principal debtor is shown". *Investment Properties of Ashville, Inc. v. Norburn, 281 N.C. 191, 188 S.E. 2d 342 (1972).*

15. With this guaranty of payment, Mr. Ahmadi is liable for IOP's debts to Static Control Immediately upon IOP's failure to pay. *EAC Credit Corporation v. Wilson., supra.*

III. IOP HAS NO CLAIM FOR DEFECTIVE PRODUCTS UNDER CONTRACT OR TORT

16. IOP, in its Counterclaim, asserts the claims of breach of warranty, fraud and unfair trade practices. These claims are all based on IOP's allegation that the products sold by Static Control to IOP were defective in some unspecified way. There is no material evidence to support these claims.

17. Summary judgment is appropriate if there are no genuine issues of fact. A party cannot create a genuine issue of material fact through mere speculation or compilation of inferences. Objectives evidence is needed. Othentec Ltd. v. Phelan,526 F. 3d 135 (4th Cir. 2008).

18. IOP makes no real attempt to try and prove its accusations. It did not submit any evidence showing Plaintiff's product was defective and caused Defendant IOP damage. IOP did not retain an expert, it did not test any of Static Control's products, and it did not quantify its alleged damages in any way. IOP put forward no evidence to show that any Static Control products had changed in quality after 2005. Instead, IOP merely speculates that this could have been the cause of its problems.

19. The evidence clearly shows that IOP successfully used Static Control's products through the end of 2004 to build their business. Then, after IOP's general manager left in December of 2004, IOP began to run into trouble. Plaintiff's evidence shows that the quality of IOP's cartridges decreased due to unwise business decisions made by the new management. Among other things, IOP changed the way it built cartridges, increased the number of used components that is reused instead of replaced, and increased its prices without warning. Defendants fail to show that the products Static Control sold to IOP caused IOP's business problems.

20. The court concludes that IOP's claims

were made merely for the purpose of delaying Static Control's collection of the sums due to it.

IV. FED. R. CIV. P. 4 (C) DISMISSAL OF COUNTERCLAIM AND DEFAULT JUDGMENT PURSUANT TO FED. R. CIV. P. 55

21. By Defendants' failure to comply with the instructions of this Court in its Order of April 14, 2008 with respect to appearing in this action or to obtain substitute counsel to appear on their behalf, both IOP and Ahmadi have violated Fed. R. Civ. P. 41(c) by disobeying an order of the Court and, at the same time, shown that the Counterclaim cannot, and will not, be prosecuted. The Counterclaim ought to be dismissed pursuant to Fed. R. Civ. P. 41(c) with prejudice because of a failure of IOP to prosecute and its failure to obey a court order. Four factors should be considered in that regard, which are: (1) the degree of the plaintiff's personal responsibility; (2) the existence of a protracted history of deliberately proceeding in a dilatory fashion; (3) the amount of prejudice to the defendant caused by the delay; and (4) whether less drastic sanctions are available. Doyle v. Murray, 938 F. 2d 33, 34 (4th Cir. 1991); Herbert v. Saffell, 877 F. 2d 267, 270 (4th Cir. 1989). Plaintiff, as well as the Court, has the right to have cases moved along the docket without undue delay. Pacific Indemnity Company v. United States, 66 F.R.D. 493 (E.D.N.C. 1975). Defendants have stated they would not appear in this Court to prosecute the IOP Counterclaim. They are personally responsible

for the delay and the prejudice to Plaintiff. They have not submitted any evidence in support of the claim. All this shows that there are no lesser drastic sanctions available, aside from dismissal.

22. In like fashion, by failing to appear in this action, and by disobeying an order of the Court, the two Defendants have also caused an entry of default to be lodged against them.

RECOMMENDATION FOR JUDGMENT

Based on the above Findings of Fact and Conclusions of Law,

IT IS HEREBY RECOMMENDED that an order be entered that:

1. Plaintiff's Motion for Summary Judgment (docket no. 32) be granted, and a default judgment based on the entry of default be entered against Defendants Intelligent Office Products, Inc. and Reza H. Ahmadi, a/k/a "Ray Ahmadi", and that judgment against said Defendants be entered holding them jointly and severally liable to Plaintiff Static Control Components, Inc. in the amount of $486, 106.66, plus Prejudgment interest in the amount of 1 1/2% per month, compounded monthly, calculated on the amount of $485,956.66 from March 6, 2007 to the date of judgment, together with the costs of this action.

2. Plaintiff's Motion for Summary Judgment seeking dismissal of Defendant IOP's counterclaims against Plaintiff (docket no. 32) be granted, and also

finding dismissal of the counterclaim appropriate under Fed. R. Civ. P. 41 (c), that the Counterclaim be dismissed with prejudice.

IT IS FURTHER RECOMMENDED that Defendant Intelligent Office Products, Inc. and Defendant Reza H. Ahmadi be ordered to return all documents or materials belonging to Static Control Components, Inc. to it within sixty days.

This the 1st day of July, 2008.

/s/ **Russell A. Eliason**
United States Magistrate Judge

Supreme Court, U.S.
FILED
JUN 15 2010
OFFICE OF THE CLERK

NO. 09-1166

IN THE

Supreme Court of the United States

Reza H. Ahmadi, Appellant

- *Petitioner,*

VS.

Static Control Components, Incorporated, Appellee

- *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

Reza H. Ahmadi

Owner, Founder and CEO

Intelligent Office Products, Inc.

7302 Wooded Valley Dr.

Houston, Texas 77095

713-515-6149

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES .....II, III

PETITION FOR REHEARING 1

GROUNDS FOR REHEARING 2

ARGUMENT 3

CONCLUSION.....10

CERTIFICATION UNDER RULE (44) 11

CERTIFICATE OF SERVICE..... 1-c

CERTIFICATE OF COMPLIANCE.....2-c

TABLE OF AUTHORITIES

CASES

Woldarsky v. Woldarsky, *243 So. 2d 629 (Fla. 1st DCA 1971)* 5

Reed v. Michigan,*398 F.2d 800, 801(6th Cir. 1968)*...5

Barnhart v. Peabody, *537 U.S. 149, 159 n.6 (2003)*...6

Browder v. Director of Dept. of Corrections, *434 U.S. 257, 264 (1978)* 6

Rogers v. First Nat'l Bank at Winter Park, *232 So. 2d 377, 378 (Fla. 1970)*.....6

Snyder v. Massachusetts, *U.S. 97, 105 (1934)*.....7

Wilson v. Arkansas, *514 U.S. 927, 933 (1995)*.....8

Nisselson v. Lernout, *469 F.3d 143, 151 (1st Cir. 2006)* 8

Alabama By-Products Corp. v. Neal, *588 A.2d 255, 258 n.1 (Del. 1991)*.....8

Gulfstream Aerospace Corp. v. Mayacamas Corp., *485 U.S. 271, 275 (1988)* 9

Caitlin v. United States, *324 U.S. 229, 233 (1945)*....9

Richerson v. Jones, *551 F.2d 918, 922 (3d Cir. 1977)*..... *9*

CONSTITUTIONAL PROVISION

U.S. Const. amend V 2, 7

STATUTES

28 U.S.C. § 2107 (a) 2
28 U.S.C. §1291 9
28 U.S.C. §1746 ..... 2-c

RULES

U.S. Supreme Court Rule 44.2 ..... 1, 11
U.S. Supreme Court Rule 29.2 4
Fed. R. App. P. 4(a) (1) (A) 2, 6
Fed. R. App. P. 4(a) (1) 4
Fla. R. Civ. P. 1.080(e) 6

CONGRESSIONAL RECORD

74 U. S. 306, 311(1869). 5

IN THE

Supreme Court of the United States

NO. 09-1166

Reza H. Ahmadi, Appellant

- *Petitioner,*

VS.

Static Control Components, Incorporated, Appellee

- *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

Petitioner [referred to herein as "Ahmadi"] submits this petition for rehearing pursuant to this Court's Rule 44.2 because of "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented". Ahmadi filed Petition for Writ of Certiorari (Docket Case No. 09-1166) on March 3, 2010, and Supplemental Appendix on March 3, 2010. Certiorari was denied by this Court on June 1, 2010.

GROUNDS FOR REHEARING

The United States District Court for the Middle District of North Carolina has "manipulated the timing", for filing of petitioner's notice of appeal, to control and influence the outcome result of the Court of Appeals opinion on the merit.

The District Court have violated the United States Constitution. The Fifth Amendment (Amendment V) to the United States Constitution, which is part of the Bill of Rights, protects and enforces an individual's rights against abuse of government authority in a legal procedure.

The District Court has also misconstrued the statute; and the rule of law and therefore it has abused its discretion.

Ahmadi is in compliance with 28 U.S.C. § 2107 (a) and Federal Rule of Appellate Procedure 4(a) (1) (A), for timely filing of the notice of appeal to Court of Appeals. This statue and rule of law are clear and straight-forward. They apply equally to all, and are the products of deliberations by Congress and the rule

makers to balance the policies of stability and fairness. If they are to be changed, then they must be changed by those who created the time limits in the first place.

ARGUMENT

Ahmadi and his corporation Intelligent Office Products, Inc. seek to appeal the District Court's final order entering a default judgment against them. Ahmadi filed a timely appeal with the District Court; the case was transferred to the Court of Appeals for review of the judgment. The Court of Appeals dismissed the appeal for lack of jurisdiction, because the notice of appeal was not timely filed [1].
Ahmadi holds that the District Court abused its discretion by re-dating the notice of appeal. This resulted from manipulation and inexcusable neglect to alter the outcome opinion of the Court of Appeals.

---

1 Court of Appeals holds that: "Because appellants failed to file a timely notice of appeal, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process".

In turn giving the trial court discretion to alter the time to appeal means that there will be no assurance as to when a judicial pronouncement is final. The lives of individuals and organizations rely on the finality of a court's decision. To allow a judgment to be altered for an unambiguous statute at their convenience or based on a judge's view of "equity," then the law has not been applied equally and the rule of law itself has been under-mined, that is un-fair to all who have placed their reliance on a court's ruling.

Under this fact presented here, where the District Court was aware of the re-dating of the filing date [2], (time limit), of the appeal and where no mistake, inadvertence or excusable neglect is shown .

The District Court had no authority to make the notice untimely for the purpose of controlling the

---

2 SUPREME COURT OF THE U.S. - RULE Part VII. Practice and Procedure - Rule 29.2: A document is timely filed if it is received by the Clerk within the time specified for filing.

FEDERAL RULES OF APPELLATE PROCEDURE –RULE Part IV. Appeal as of Right -Fed.R.App.P. 4(a)(1): allows an appeal to be docketed as filed on the date it is received by court.

outcome. Similarly, see, e.g., , 243 So. 2d 629 (Fla. 1st DCA 1971) (explaining that where there has been no mistake, inadvertence or excusable neglect, the trial court had no authority to extend the time for appealing a final judgment by re-dating it after time for appeal had run;).

Jurisdictional deadlines and time limits are woven into every stage of litigation. This time limit is the one action that marks whether a lawsuit will end or whether it will continue on in a new court. Much is at stake for the parties, the court system, and society at large, in knowing whether a judicial decision has come to rest and cannot be altered or may still be overturned or modified by a reviewing court. Because of that, the law has long recognized that the goals of finality and evenhandedness do not allow these time limits to be overlooked by the court [3].

---

3 For Congress to change, rather "than that the court depart from its settled course of action for a quarter of a century." *74 U. S. 306, 311(1869).* Reed v. Michigan, 398 F.2d 800, 801 (6th Cir. 1968) (per curiam) (holding that timely appeal is jurisdictional and "this Court cannot waive or modify that requirement");

The Supreme Court's precedent has been consistent for a century and a half. See, e.g., Barnhart v. Peabody, 537 U.S. 149, 159 n.6 (2003) (noting that it is an "accepted fact that some time limits are jurisdictional") (Souter, J.); Browder v. Director of Dept. of Corrections, 434 U.S. 257, 264 (1978) (recognizing that the time to appeal under statute "set[s] a definite point of time when litigation shall be at an end " and therefore is jurisdictional) [4]; and if it is to be changed, that is for the rule makers); Under Florida Rule of Civil Procedure 1.080(e), the rule conforms to the long-standing principle that "[w]hile our procedural rules [should] provide for an orderly and expeditious administration of justice, we must take care to administer them in a manner conducive to the ends of justice." Rogers v. First Nat'l Bank at Winter Park, 232 So. 2d 377, 378 (Fla. 1970). A rule that would deny a citizen who has timely

---

4 The purposes served by a notice of appeal were accomplished by the Ahmadi's filing with District Court, and the filing occurred within the thirty days of the date of the District Court's order/judgment under the Fed. R. App. P. 4(a) (1) (A).

sought an appeal, his or her right to appeal based upon a proven negligent or mistake by a clerk's office, is not consistent with justice or due process [5]. The late filing of the appellants' notices of appeal in this case resulted from District Court abuse and manipulation that was beyond the control of the appellant. Thus the rationale of the decisions favorable to the late-filing appellant in this and similar cases are one of fundamental fairness. Practical experience teaches that the judicial system as a whole works far better—with greater stability and overall fairness—when the time for an appeal cannot be manipulated by the trial court and thus is treated as jurisdictional.

---

5 The Fifth Amendment (Amendment V) to the United States Constitution, which is part of the Bill of Rights, protects and enforces of an individual's rights against abuse of government authority in a legal procedure.

In 1934, the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental" (Snyder v. Massachusetts)*U.S. 97, 105 (1934)*. As construed by the courts, it includes the person or panel making the final decision over the proceedings be impartial in regards to the matter before them.

In the case of jurisdictional time limits, courts at times refer to the "fabric of the law, See, e.g., Wilson v. Arkansas, 514 U.S. 927, 933 (1995) (noting that the "knock and announce" rule is part of the "fabric" of Fourth Amendment law); Nisselson v. Lernout, 469 F.3d 143, 151 (1st Cir. 2006) (The in pari delicto defense has long been "woven into the fabric of the law."). A fabric woven from the thread of judicial decisions. the fabric is longer than most and has been woven from thousands of threads. The idea that a hole should be cut in the fabric here and there may seem immediately satisfying for a particular case. But the experience of generations of judges teaches that cutting such holes in the fabric will, in the long run, only cause the fabric as a whole to unravel.

While it is an important part of our jurisprudence, its application, or that of similar concepts, should be reserved for those instances that threaten the fabric of the law, or which by an improper handling of the law, would deprive a person of a clear right. See Alabama By-Products Corp. v. Neal, 588 A.2d 255,

258 n.1 (Del. 1991).

It is also clear that the jurisdiction of the United States Court of Appeals is defined by statute and extends only to those matters authorized by Congress. Title 28, United States Code, § 1291 grants the federal court of appeals jurisdiction to review all final decisions of the District Courts. Without proper jurisdiction, the Court of Appeals cannot proceed at all, but can only note the jurisdictional defect and dismiss the case. In Ahmadi's case the jurisdictional defect is caused by the District Court modifying and re-dating the time for filing the notice of the appeal, therefore Ahmadi's case is not final.

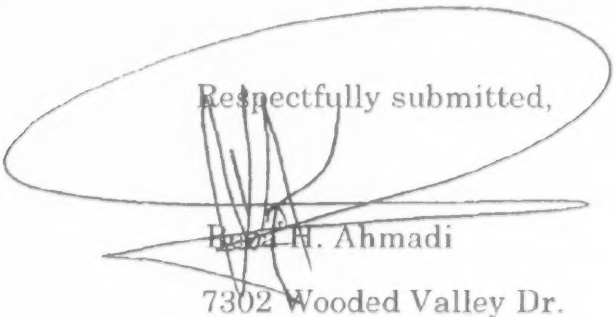
A final decision is one that terminates the litigation on the merits and leaves nothing to be done except enforcement of the judgment. Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 275 (1988); Caitlin v. United States, 324 U.S. 229, 233 (1945); Richerson v. Jones, 551 F.2d 918, 922 (3d Cir. 1977). It cannot be merely a provisional disposition of the issue, and it cannot be merely a step toward final

disposition of the merits.

Further, a final order is one that disposes of the entire controversy; that is, it resolves the claim with respect to the United States Constitution and rule of law.

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests the Court to grant his petition for rehearing.



Respectfully submitted,

Bijan H. Ahmadi

7302 Wooded Valley Dr.

Houston, Texas 7709

713-515-6149

CERTIFICATION UNDER RULE 44.2

Pursuant to this Court's Rule 44.2, Ahmadi hereby certify that this Petition for Rehearing is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Ahmadi hereby also certify that this Petition for Rehearing is presented in good faith and not for delay.

Dated: June 15, 2010

Reza H. Ahmadi